IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.Rev.Pet.No. 2959 of 2007()

AGAINST THE ORDER DATED 16/07/2007 IN CMP 6887/2006 IN CC.27/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM

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REVN. PETITIONER:

T.P.NANDAKUMAR, S/O.DAMODARAN NAIR,
CHIEF EDITOR,CRIME BI-WEEKLY,MNOLOKAM GROUP OF PUBLISHING CO. PVT., LIMITED,
3RD FLOOR, K.M.A. BUILDING,PUTHIYARA ROAD,
CALICUT-673 004.

BY ADV. SRI.K.RAMAKUMAR
SRI.R.JAYACHANDRAN

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

2. THE CIRCLE INSPECTOR OF POLICE,
MUSEUM POLICE STATION,THIRUVANANTHAPURAM.

BY DIRECTOR GENERAL OF PROSECUTION SRI. P.G. THAMBI

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON 18-09-2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P.No. 2959 of 2007

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Dated: 18-09-2007

ORDER

In this Revision filed under Sec. 397 read with Sec. 401 Cr.P.C. the revision petitioner (T.P. Nandakumar) who is the first accused in C.C. 27 of 2006 on the file of the J.F.C.M - V , Thiruvananthapuram challenges the order dated 16-7-2007 passed by the learned Magistrate rejecting the revision petitioner's application (C.M.P. 6887/06) for discharge under Section 239 Cr.P.C.

2. The revision petitioner is the Chief Editor of a bi-weekly called "Crime" published from Kozhikode. On 28-6-1999 Smt. Sobhana George who was then an opposition M.L.A.,. submitted a written complaint before Sri. E.K. Nayanar, the then Chief Minister of Kerala. The substance of the said complaint is as follows:

At about 9 a.m. on 26-5-1999 two strangers came to her rented house at Angadikkal in Chengannoor. One of them introduced himself as Santhosh Thampan and told her that he is the reporter and his companion is the photographer of an evening daily which was being launched. They sought her permission to interview her in connection with late. Smt. K.R. Saraswathi Amma, an eminent social worker who

had twice represented Chengannur Constituency in the Kerala Legislative Assembly. That day was the cremation day of late Saraswathi Amma. The two visitors then conducted an interview of the complainant. The photographer took certain photographs of the complainant and her residential house. While leaving her house the aforesaid persons told her that their Chief Editor T.P. Nandakumar would call her that night. They also took her phone number and mobile phone number. At about 10 p.m. that day the first accused T.P. Nandakumar introducing himself to be the chief editor of Crime bi-weekly called her over the phone. He told her that reporter Santhosh Thampan and the photographer of the Crime Weekly were the persons who had visited the complainant in the morning and that he was calling the complainant in connection with their visit. She told him that the visitors had not revealed to her that they are coming from Crime Weekly and she narrated to him what the visitors had told her. Nandakumar then told her that Crime bi-weekly was facing acute financial crisis and the complainant should urgently give him Rs. 5 lakhs. She told him that she was not in a position to give the money. Thereupon Nandakumar told her that he was having in his possession certain details and photographs pertaining to the complainant and that he may be constrained to publish them. When the complainant

asked him whether he was blackmailing her, he told her that he would give her two days' time to think over and disconnected the phone. After 10.30 p.m. on 29-5-1999, Nandakumar again called her over the phone and told her that he had obtained more particulars about her and that if she was disinclined to give him Rs. 5 lakhs, herself, her husband and daughter would find it difficult to walk along the streets. He also threatened her that it would create difficulties to many of her superiors. He added that he would supply ten thousand free copies of Crime Weekly in that area rendering it impossible for her to face her voters and she will have to bid farewell to her political career. So saying he disconnected the phone. Thereafter at 7 a.m. on 5-6-1999 Nandakumar again called her over the phone and told her that the Assembly Session was about to begin and he had already printed certain bad details pertaining to her and that publication of the same could be averted by her if she was willing to pay the money demanded by him. She once again told him that she could not give the money demanded by him and that she would be constrained to approach the court. To this, Nandakumar replied that personalities like Mohanlal, Sasi, the Policital Secretary of the Chief Minister, Prabha Varma, M.A. Baby, Sukumar Azheekode, Vellappilly etc. were in no way inferior to her and that she would learn only from experience. He

then disconnected the phone. In the morning of 25-6-1999 Nandakumar again called her over the phone and told her that the latest edition of Crime Weekly had been published and asked her to buy one and read the same. He also added that he would be starting a serial pertaining to her and he would be constrained to write about her daughter also. He threatened her that if she wanted to avoid more trouble it would be better to pay the money demanded by him or else she should not dream of her daughter's marriage. He also told her that she need not intimidate him stating that she would go to court. Nandakumar is threatening her and frequently demanding Rs. 5 lakhs by publishing untrue stories about her. He is also trying to blackmail her mother by calling her over the phone. Crime Weekly which is published only for the purpose of extorting money from personalities commanding respect in the society is throwing to the winds all legal provisions. T.P. Nandakumar who is indulging in intimidation and character assassination of the complainant who is a lady M.L.A. is publishing her photographs and false stories about her without her consent and he is to be brought to justice. A raid has to be conducted in the office of Crime Weekly and false documents meant for tarnishing the reputation of respectable persons holding high offices in the society should be seized with a view to curb the dirty

tendencies of such persons.

3. The above complaint was forwarded by the Chief Minister to the City Police Commissioner, Thiruvananthapuram who in turn , forwarded the same to the Circle Inspector of Police, Museum Police Station, Thiruvananthapuram with a direction to register a crime for offences punishable under Sections 120 B, 511 of 384 and 511 of 420 read with Sec. 34 I.P.C. and to investigate the same. The museum police registered the case as Crime No. 144 of 1999 for the aforementioned offences on 30-6-1999 itself. During the course of the investigation, the Circle Inspector of Museum Police Station took an additional statement from Sobhana George to the effect that she was threatened by Nandakumar while she was in the M.L.A. Quarters, Thiruvananthapuram. Subsequently the Circle Inspector of Museum Police Station filed a charge sheet before the Chief Judicial Magistrate, Thiruvananthapuram on 16-11-2004 for offences punishable under Sections 511 of 420 , 385, 120 B and 509 read with Sec. 34 I.P.C. The case was thereafter made over to the J.F.C.M,. V Thiruvananthapuram, who took cognizance of the offences and registered the case as C.C. 27 of 2006. After receipt of summons the revision petitioner (Nandakumar) filed the above petition C.M.P. 887 of 2006 before the Magistrate for a discharge on the allegation that as

per the averments in the written complaint of Sobhana George the Museum Police had no territorial jurisdiction to register the crime or investigate the same. The learned Magistrate dismissed the said petition by the impugned order holding inter alia that in the additional statement given by Sobhana George during investigation she had mentioned about two threatening calls made by the revision petitioner to her room in the M.L.A. Quarters at Thiruvananthapuram and, since the M.L.A. Quarters was situated within the local limits of Museum Polcie Station, the Museum Police had jurisdiction to register the crime and investigate the case.

4. I heard Advocate Sri. K.Ramakumar, the learned counsel appearing for the revision petitioner and Adv. Sri.P.G. Thambi,. the learned Director General of Prosecution. I also perused the records.

5. Going by the averments in the complaint submitted by Sobhana George before the Chief Minister it is crystal clear that the blackmailing phone calls by by first accused Nandakumar was made to her residence at Changannur. If we go by the place of publication of the bi - weekly and the address of the accused/revision petitioner Nandakumar, it is at Kozhikode. The threatening telephone calls were received by the complainant Sobhana George at her residence at Chengannur. Hence the Chengannur police alone had jurisdiction to

register a crime and investigate the same. Merely because the Chief Minister forwarded the complaint to the Thiruvananthapuram city Police Commissioner who in turn forwarded the same to the Museum Police with direction to investigate and register a crime, the Museum Police would not get jurisdiction to register the crime and investigate the same. Sub-section (1) of Sec. 156 Cr.P.C. reads as follows:

> *"156. Police Officer's power to investigate cognizable cases – (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII".*

Thus, the territorial jurisdiction of a police station for the purpose of investigation is co-extensive with that of the appropriate court which is competent to try the offence. Section 177 Cr.P.C. enjoins that every offence shall ordinarily enquired into and tried by a court within whose local jurisdiction such offence was committed. If so, the Chengannur police alone could have registered the crime and investigated the same. Where a complaint alleging the commission of a cognizable offence is made before the Station House Officer of a Police Station which does not have territorial jurisdiction over of the place of crime he cannot refuse to record the information. If he does so, it would amount to dereliction of duty. The proper course in such

a case would be to record the information and forward the same to the police station having jurisdiction. **(Vide State of Andhra Pradesh v. Punati Ramulu and Others – AIR 1993 SC 2644).**

6. The Museum Police instead of recording the information contained in the complaint and transferring the same to the Chengannur police were arrogating to themselves the power of investigation which they did not possess. In order to justify the investigation by the Museum police a further statement was taken from Sobhana George to the effect that she got threatening calls from the first accused Nandakumar while in the M.L.A. Quarters at Thiruvananthapuram. This was a clear manipulation made by the Museum Police to justify the illegal investigation undertaken by them. When as per the averments in the complaint the Museum Police could not have embarked upon an investigation into the allegations in the complaint, it was a case of total lack of jurisdiction and not merely a defect or irregularity in investigation and the want of jurisdiction was raised at the earliest opportunity as well . After illegally commencing an investigation without jurisdiction the Museum police was committing another illegal act of recording a further statement evidently with a view to clothe the Museum police with jurisdiction to continue the investigation. The learned Magistrate was wrong in holding that in

view of the further statement by Sobhana George the Museum Police had jurisdiction to conduct the investigation. The learned Director General of prosecution also fairly conceded that on the facts of this case the Museum Police had no authority to register the crime or investigate the offence. The impugned order is accordingly set aside and the revision petitioner/ first accused is discharged . It is, however, made clear that this order will not preclude the Museum Police from transferring the complaint to the police station having jurisdiction to be dealt with in accordance with law.

7. In the result this revision is allowed as above.

8. The facts of this case will reveal the lack of proper application of mind by the personal staff of the then Chief Minister and that has resulted in the forwarding of the complaint wrongly to the Thiruvananthapuram City Police Commissioner who had no role to play except to make over the complaint to the Station House Officer of Chengannur Police Station which is in Alappuzha District. Equally reprehensible is the action of the then City Police Commissioner, Thiruvananthapuram in forwarding the complaint to the Circle Inspector of Police, Museum Police Station, Thiruvananthapuram with direction to register a crime for the specified offences under the Indian Penal Code and to investigate the same. If he had applied his

mind and had taken pains to carefully go through the averments in the complaint he would not have directed the Museum Police to register the crime. Such abdication of their powers by the respective functionaries shows the nonchalant, mechanical and if not irresponsible way in which a complaint from a sitting M.L.A. was dealt with. Such administrative deficiencies and failures are bound to recur if those in power fail to harness the experience, wisdom and intellect of trained personal conversant with governance. The pernicious trend seems to be to antagonise and alienate the intelligentsia.

V. RAMKUMAR,
(JUDGE)

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